IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 28 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME -TAX

Versus

SHARAD FAMILY TRUST

Appearance:

1. INCOME TAX REFERENCE No. 28 of 1992
MR TANVISH U BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment years 1983-84 to 1985-86:-

"Whether, the Appellate Tribunal is right in law and on facts in treating the protective assessment made on the assessee as substantive?"

2. We have heard Mr Tanvish Bhatt, learned Standing Counsel for the applicant- revenue. Though served, none appears for the respondent- assessee.

3. In the years under consideration, the ITO had assessed the returned losses in the hands of the trustee of the assessee trust on protective basis for the reason that such a treatment had been given in the past to the losses returned by the assessee which had been considered as belonging to the trustees himself. In appeals, the CIT(A) took note of the decision of the Tribunal in assessee's own cases for A.Ys. 1978-79 and 1979-80 as also in the case of Shri S.N.Patel, the trustees of the assessee trust, in ITA Nos.1842 to 1846/85 for A.Y. 1978-79 and to 1982-83 and held that the assessments were required to be made on substantive basis in the present cases. This order was confirmed by the Tribunal in second appeals.

4. In the statement of the case drawn at the instance of the revenue, the Tribunal has noted that in the case of Shri S.N. Patel, the trustee of the assessee trust, reference on a similar question covering the subject matter of the proposed question had been made by the Tribunal. The learned counsel states that the said reference were numbered as ITR NO.73 of 1987 and allied references and that those references have been disposed of as per this Court's decision dated 14-2-2002. In the said references, this Court has held that the income of Sharad Family Trust was not taxable in the hands of Sharad Narandas who was its Managing Trustee and that the Tribunal was right in holding that the income of the Sharad Family Trust was not liable to be included in the individual income of the Managing Trustee Sharad Narandas under Section 60 of the Act.

Following the aforesaid decision, our answer to the question referred for our opinion is in the affirmative i.e. in favour of the assessee and against the revenue.

5. The Reference accordingly stands disposed of with

no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-